IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15570 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GHANSHYAM CHATRABHUJ THAKKAR

Versus

NIRMALABEN HARIRAM THAKKAR

Appearance:

1. Special Civil Application No. 15570 of 2003

MR YS MANKAD for Petitioner No. 1-2

MR AR THACKER for Respondent No. 1

RULE SERVED for Respondent No. 1

RULE UNSERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 04/11/2004

ORAL JUDGEMENT

1. The petitioners herein have preferred this petition in order to quash and set aside the order dated 03/04/2000 application below exh.31 passed by the learned Civil Judge (J.D.), Bhuj-Kachchh, and to allow application below exh.31 for the consolidation of the two

suits.

2. Respondent no.1 herein preferred Regular Civil Suit No.279 of 1995 before the Court of the learned Civil Judge (J.D.), Bhuj, against the petitioners herein, for the eviction and possession of the suit shops on the grounds of breach of the terms of tenancy and sub-tenancy.

3. On the other hand, the original plaintiffs, petitioners herein, preferred Regular Civil Suit No.465 of 1995 before the Court of the learned Civil Judge (S.D.), Bhuj-Kachchh, against the defendants, respondents herein, on the same grounds. The petitioners herein filed application below exh.31 requesting the Court to consolidate both the suits and decide both the suits at the same time. However, the learned Judge by order dated 03/04/2000, at Annexure-A to the petition, dismissed the application below exh.31 filed by the petitioners. Hence, this petition.

4. Mr.Y S Mankad for the petitioners has contended that the trial Court was not justified in dismissing the application of the petitioners on the ground that in both the cases the appeal position was different. He has contended that the trial Court had not considered the fact that when the suit of the plaintiffs would be decreed, the suit of the defendants would automatically fail.

5. Mr.Mankad for the petitioners has relied upon a decision of this Court in the case of Zakinaben D/o. Gulamhusen Kamruddin Lokhandwala v. Babubhai Alimohmad Kapadia reported in 1999 (1) G.L.R., p.378, wherein it has been held that the power under Section 151 of the Code of Civil Procedure, 1908, can be exercised if it is desirable in the interest of justice to avoid the parties to adduce the same or similar evidence in two suits twice or to avoid the multiplicity of evidence.

6. Mr.Mankad for the petitioners has also relied upon a decision of the Apex Court in the case of Chitivalasa Jute Mills v. Jaypee Rewa Cement reported in (2004) 3 S.C.C., p.85, wherein it has been held that in order to meet the ends of justice, the Court can direct the consolidation of two suits by exercising powers under Section 151 of the Civil Procedure Code, 1908.

7. I have heard learned counsel for the parties and have gone through the order of the trial Court. In the present case, the parties as well as the subject matter

in both the suits are same. Hence, the trial Court ought to have consolidated the two suits, keeping in mind the law laid down by this Court in Zakinaben D/o. Gulamhusen Kamruddin Lokhandwala v. Babubhai Alimohmad Kapadia case (supra).

8. In above view of the matter, the petition is allowed. The order dated 03/04/2000 below exh.31 passed by the learned Civil Judge (J.D.), Bhuj-Kachchh, is quashed and set aside. Both the suits, namely, Regular Civil Suit No. 279/1995 pending before the Court of the learned Civil Judge (J.D.), Bhuj, and Regular Civil Suit No.465/1995 pending before the Court of the learned Civil Judge (S.D.), Bhuj-Kachchh, are directed to be consolidated. The competent Court is directed to proceed with the hearing of both the suits together after its consolidation. Rule is made absolute accordingly.

(K. S. Jhaveri, J.)

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